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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 4910.00011	
I hereby certify that this correspondence is being facsimile transmitted to the USPTO at 571-273-8300 on the date listed below. on <u>January 9, 2006</u> Signature <u><i>Cheryl M. Fernandez</i></u> Typed or printed name <u>Cheryl M. Fernandez</u>		Application Number <u>09/696,051</u>	Filed <u>October 25, 2000</u>
		First Named Inventor <u>Kenneth R. Owens, et al.</u>	
		Art Unit <u>2661</u>	Examiner <u>Bob A. Phunkulh</u>
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the		<u><i>Cheryl M. Fernandez</i></u> Signature	
<input type="checkbox"/> applicant/inventor.		<u>Cheryl M. Fernandez</u> Typed or printed name	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)		<u>630-796-3019</u> Telephone number	
<input type="checkbox"/> attorney or agent of record. Registration number _____		<u>January 9, 2006</u> Date	
<input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>52,611</u>			
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
<input checked="" type="checkbox"/> Total of <u>1</u> forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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NO. 469 P. 4

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Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Owens et al.

Examiner: Bob A. Phunkulh
Group Art Unit: 2661

Serial No.: 09/696,051

Filed: October 25, 2000

Title: PROTECTION/RESTORATION OF MPLS
NETWORKSCERTIFICATE OF FACSIMILE
TRANSMISSIONI hereby certify that this correspondence
and attached papers are being facsimile
transmitted at 571-273-8300 on January
9, 2006.By: 

Cheryl M. Fernandez

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450PRE-APPEAL BRIEF REQUEST FOR REVIEW REASONS

Dear Sir:

Responsive to Final Office Action mailed on November 8, 2005, the Applicants respectfully request a Pre-Appeal Brief Request for Review for the following reasons. The Applicants respectfully submits that this Request is timely filed under 35 U.S.C. § 21(b) because January 8, 2006, two months from the mailing date of the Final Office Action, fell on a Sunday and this Request is being filed on the next succeeding business day.

Claims 1-20 are pending in the present application.

Claims 1,3-5,7-20 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,721,269 of Cao et al. ("Cao").

Claim 6 is rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,532,088, of Dantu et al. ("Dantu").

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Claim 2 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Cao in view of U.S. Patent No. 5,241,534 of Omuro et al. ("Omuro").

Claim 1 is rejected under 35 U.S.C. § 102(e) as being anticipated by Cao. Specifically, the Examiner states that:

Regarding claim 1, Cao discloses an multi-protocol label switching system (MPLS) having a working path over which data is carried from a source to a destination and further having a protection path over which data from the source to the destination can be carried, a method of initiating an MPLS protection path switch over from the working path to the protection path comprising the steps of:

-detecting a failure on the working path at a first switching node (a router along the path that first detects the failure) of the working path (routers along the path monitor the path and report the failure to the source node col. 3 lines 39-46, 48-51);

-transmitting a failure notification message from only a first switching node to at least a second, switching node of the working path (if a failure is detected, a router that first detects the failure propagates the physical level maintenance to the source and sink routers, col. 3 lines 48-51);

-routing data from the working path to the protection path upon the receipt of the failure notification message at least one of: the second switching node and a third switching node of the working path, wherein the at least one of the second switching node and the third switching node is at an origin of both the working path and the protection path (in order to accommodate a failure in the newly selected path, the sink and source nodes may establish another path back to the source router to maintain the desired redundancy and the secondary (and ternary, etc.) path(s) may also be monitored for failure so that they may be replaced in the event of their failure, col. 2 lines 25-45).

The above reference is from the Final Office Action mailed on November 8, 2005, pp. 2-

3. Underlined emphasis is added by the Applicants.

The Applicants respectfully submit that the Examiner has failed to point out in Cao the limitation in Claim 1 of routing data, by a switching node of the working path, from the working path to the protection path upon receipt of a failure notification message at the switching node, wherein the switching node is at the origin of both the working and protection paths. Cao discloses in its Summary, "In response to the physical layer failure indication, the failure is propagated and the exit router selects an alternative, previously established, path for immediate use." (Cao, col. 2, lines 64-67) For further arguments, please see the Applicants' 9-2-05 Amendment, p. 8 through the top of p. 9.

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In addition, the Applicants respectfully note that the Examiner's new arguments regarding Cao in the 11-8-05 Final Office Action, underlined above, include a factual error. Cao discloses that "the sink and source nodes may establish another path back to the source router to maintain the desired redundancy". (Cao, col. 2, lines 43-45). Furthermore, Cao discloses that "the secondary (and ternary, etc.) path(s) may be monitored for failure so that they may be replaced in the event of their failure". (Cao, col. 2, lines 45-47) This path which may be established by the sink and source nodes is a secondary path for maintaining the desired redundancy. It is not an operational path.

In contrast, Claim 1 is limited to:

1. In a multi-protocol label switching system (MPLS) having a working path over which data is carried from a source to a destination and further having a protection path over which data from the source to the destination can be carried, a method of initiating an MPLS protection path switch over from the working path to the protection path comprising:
 - a. detecting a failure on the working path at a first switching node of said working path;
 - b. transmitting a failure notification message from only a first switching node to at least a second, switching node of the working path; and
 - c. routing data, by at least one of the second switching node and the third switching node of the working path, from the working path to the protection path upon the receipt of the failure notification message at the at least one of the second switching node and the third switching node, wherein the at least one of the second switching node and the third switching node is at an origin of both the working path and the protection path.

(Underlined emphasis is added by the Applicants.) Independent Claims 4, 6 and 12 include similar limitations. Claims 2, 3, 5, 7-11, 13-20 directly or indirectly depend on independent Claims 1, 4, 6, and 12. Therefore, Cao does not render Claims 1,3-5,7-20 unpatentable under 35 U.S.C. § 102(e).

Claim 6 is rejected under 35 U.S.C. § 102(e) as being anticipated by Dantu. Specifically, the Examiner states that:

Regarding claim 6, Dantu discloses a multi-protocol label switching (MPLS) system comprised of a first MPLS protection switch

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having a data input port into which MPLS data is received from a data source (the central network node, see figure 3);

a second MPLS switching system coupled to said first MPLS protection switch via a first data path carrying MPLS data, said first data path comprising an MPLS working path (either network node 312 or 320, see figure 3);

a third MPLS switching system coupled to said first MPLS protection switch via a second data path capable of carrying MPLS data, said second data path comprising an MPLS protection path (either network node 312 or 320, see figure 3);

an upstream reverse notification tree (RNT) data path extending at least between said second MPLS switching system to said MPLS protection switch, that upon a failure can carry data by which in response to the failure a switchover from a working path to a protection path can be initiated (an overhead signaling message are generated and transmitted back to the ingress node identifying the fault condition so that the protection switching may occur quickly. The overhead signaling messages are transmitted by the nodes detecting the error on a communication link so that the ingress node may effectuate the change on quick basis, see col. 4 lines 8-21; and col. 9 lines 8-33 and figure 3).

The above reference is from the Final Office Action mailed on November 8, 2005, pp. 7-8. Underlined emphasis is added by the Applicants.

The Applicants respectfully submit that that the Examiner has failed to point out in Dantu the limitation in Claim 6 of an upstream reverse notification tree (RNT) data path that follows the MPLS working path and extends at least between the second MPLS switching system to the first MPLS protection switch, that upon a failure can carry a failure notification. Dantu discloses embodiments where "every IP router and node periodically and automatically generates a status signal that is transmitted to all other IP notes and routers". For further arguments, please see the Applicants' 9-2-05 Amendment, p. 10 through the top of p. 11.

In contrast, Claim 6 is limited to:

6. A multi-protocol label switching (MPLS) system comprised of:

a first MPLS protection switch having a data input port into which MPLS data is received from a data source;

a second MPLS switching system coupled to the first MPLS protection switch via a first data path carrying MPLS data, the first data path comprising an MPLS working path;

a third MPLS switching system coupled to the first MPLS protection switch via a second data path capable of carrying MPLS data, the second data path comprising an MPLS protection path;

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an upstream reverse notification tree (RNT) data path that follows the MPLS working path and extends at least between the second MPLS switching system to the first MPLS protection switch, that upon a failure can carry a failure notification by which in response to the failure a switchover from the MPLS working path to the MPLS protection path, by a node at an origin of the MPLS working path and the MPLS protection path, can be initiated.

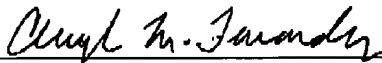
(Underlined emphasis is added by the Applicants.) Therefore, the Applicants respectfully submit that Dantu does not render Claim 6 unpatentable under 35 U.S.C. §102(e).

In view of the arguments set forth herein, it is respectfully submitted that the applicable rejections have been overcome. Accordingly, it is respectfully submitted that Claims 1-20 should be found in condition for allowance.

If there are any additional charges, please charge them to our Deposit Account Number 500-654.

Respectfully submitted,

Dated: January 9, 2006

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